

## Risk Update • July 2022

# Anti-money laundering (AML) and Sanctions

A draft of The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 has been published. They will require risk assessments and policies, controls and procedures (PCPs) to address proliferation financing risk in addition to AML and counter terrorist financing.

One should resist the initial reaction that this may not impact on law firms: although it will be more relevant to some than others, such as those advising on trade finance, insurance and shipping, all firms in the regulated sector will have to address it. The detailed definition of proliferation financing in regulation 6 includes the provision of funds or financial services in connection with weapons, dual-use goods and technology for non-legitimate purposes in contravention of financial sanctions.

The draft also makes provision in relation to cryptoassets and widens the scope of provisions relating to trust or company service providers (TCSPs), including the formation of limited partnerships registered in England & Wales or Northern Ireland and additional customer due diligence requirements. It also widens information and intelligence sharing gateways with regulators including the Solicitors Regulation Authority (SRA) and extends the material discrepancy reporting provisions: firms will be required to report material discrepancies in beneficial ownership arising from ongoing client due diligence obligations. The government intends to provide a list of what is to be regarded as a 'material discrepancy'.

The FATF has added Gibraltar to its grey list of jurisdictions with strategic deficiencies in its anti money laundering and counter terrorist financing regime and removed Malta.

The Law Society has published two guidance notes, *Remote working, client interaction and associated use of AML technology* and *Impacts of economic instability on money laundering risk*. These notes are supplementary to the Legal Sector Affinity Group (LSAG) anti-money laundering guidance for the legal sector and do not supersede it.

Links to the above can be found on [www.legalrisk.co.uk/News](http://www.legalrisk.co.uk/News).

The SRA has sent out [questionnaires](#) to firms requesting information on their work within the scope of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR) to assess the risk of the law firms they supervise. Responses are required by 31 July 2022 from firms within the scope of the MLR; firms no longer in scope must respond accordingly and submit form FA10b to amend their authorisation records.

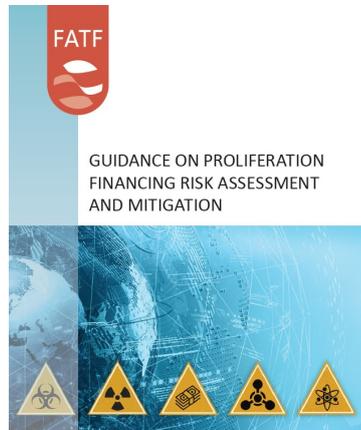
Finally, press reports indicate that AML controls may be strengthened in the United States, with the fast-tracking of the [ENABLERS Act](#) (full title: "Establishing New Authorities for Businesses Laundering and Enabling Risks to Security Act"). This is intended to lead to the imposition of due diligence and reporting requirements and provision for PCPs on lawyers and other gatekeepers, including accountants, financial advisers, art dealers and TCSPs – but, oddly, not real estate agents.

We already provide legal advice to a large number of US firms with UK offices on their AML compliance and audits. We also advise on complex reporting issues and legal professional privilege. For further information contact [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk).

## Conflicts of interest: remote working provides a new twist

In the United States, a 'fully-remote' law firm acting in a class action, recently faced a disqualification motion when one of its attorneys (who was not advising the plaintiffs in the class action) moonlighted as a document reviewer for the defendant. The application was successfully resisted.

We mention it as we have also heard of such an instance in a large law firm in the UK. Firms should be alert to the risk and ensure that their terms of employment prohibit other employment without the firm's consent.



### In this Issue

- Anti-money laundering (AML) and Sanctions
- Conflicts of interest: remote working provides a new twist
- Our team
- Data protection, information security and cyber crime
- Professional regulation
- Professional indemnity insurance: Why insurers fail and other coverage problems

### Note

*This newsletter is a general guide. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice.*

*Subjects covered change constantly and develop.*

*No responsibility can be accepted by the firm or the author for any loss occasioned by any person acting or refraining from acting on the basis of this.*

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## Our team

We are pleased to report that Rachael Lawrence, who has been with the firm since 2011 and was previously our administrator, has been admitted as a solicitor. Rachael is a Diploma member of the Institute of Legal Finance & Management (ILFM) and also has two ILFM Associate level certificates in Accounting for Legal Finance Professionals and Financial Management.



## Data protection, information security and cyber crime

The SRA's latest Risk Outlook published on 1 June 2022 identified the key risks as follows –

- Phishing and email modification frauds, which make up half of all the cybercrime reports they receive, with concerns that voice impersonation may become an issue as it has in other sectors;
- Ransomware, of which there were 18 reports in 2021, with criminals gaining access to sensitive information; and
- Attacks on suppliers, including an IT service provider and barristers' chambers.

Each is discussed in more detail in the report, and several examples are provided. A link is on [www.legalrisk.co.uk/News](http://www.legalrisk.co.uk/News).

## Professional regulation

The SRA's fining power for recognised bodies, solicitors and employees (who are not in ABSs) has increased from £2,000 to £25,000.

The SRA has published its latest suite of [annual reports](#). They received 273 reports of potential anti-money laundering breaches, up from 196 the previous year. The number of authorised firms has fallen from 10,107 in 2019/20 to 9,860 in 2020/21, including 1040 licensed bodies (alternative business structures – ABSs). It is notable that there are still many practices without the protection of limited liability – 1,878 sole practitioners and 1,352 partnerships. While this does not afford complete protection against personal liability, it is nonetheless a valuable step to take.

The SRA reports also identify key areas of enforcement action which include sexual misconduct, non-disclosure agreements (NDAs), AML, dubious investment schemes Transparency Rules breaches, and consumer mis-selling claims.

We have had a number of instructions from firms wishing to provide 'white labelled' services through other professional service firms. These give rise to a variety of compliance issues: suffice to say, for present purposes, that caution is needed.

We are also advising firms on a variety of SRA investigations. Recent instructions include #MeToo issues, use of client account as a banking facility (and how to avoid it), and accounts issues arising from serious breaches by a predecessor firm.

For further information contact [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk).

## Professional indemnity insurance: Why insurers fail and other coverage problems

It is now some years since we experienced the carnage of solicitors' professional indemnity insurers failing between 2010 and 2018, with Quinn, Balva, ERIC, Berliner, Lemma, Elite, Alpha, Enterprise and CBL in turn becoming insolvent and causing lasting damage.

20 years have passed since the *Insurance Company Failure* report by Roger Massey and others which followed the collapse of Independent Insurance.

The Property and Casualty Insurance Compensation Corporation (PACICC) in Canada has released the latest [report](#) in its series on insurance company failures, reviewing four examples, including CBL, whose subsidiary CBL Insurance Europe dac (CBLI), registered in Ireland, insured a small number of solicitors in England & Wales. Like a number of the other insurers listed above, CBLI was also active, through a subsidiary, in the provision of decennial liability (builders' warranty) insurance in France, which has experienced many of the same problems affecting the solicitor market in England & Wales and involved many of the same insurers.

The latest PACICC report, as in previous years, identifies the causes of failure as internal operations, including governance and inadequate capital management, complex organisational structures and adequacy of regulatory oversight, but has now added natural disasters to the list.

While the risk of failure in the solicitor market is now far less than it was, and there are now no unrated insurers providing primary cover to solicitors, some are more secure than others. A recession may result in a spike in claims, as recessions have in the past, but the indirect aspect of insurers' exposure to the risk of natural disasters should also be added to the melting pot.

We are still receiving new instructions from law firms which have faced claims which should have been covered had their insurers been solvent. In a number of cases we have identified other avenues for securing indemnity.

We are also providing legal advice to solicitors and professional service firms in several other cases where there are coverage issues on substantial claims and where insurers' panel firms are conflicted.

For advice contact [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk).